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No. 82-1471

In The
Supreme Court of the United States
October Term, 1982

THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA,
Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF MISSOULA
AND
HAVRE FEDERAL SAVINGS AND LOAN
ASSOCIATION,
Respondents.

MOTION TO FILE BRIEF OF AMICUS CURIAE OF THE MULTISTATE TAX COMMISSION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

BRIEF OF AMICUS CURIAE OF THE MULTISTATE TAX COMMISSION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

William D. Dexter
General Counsel
MULTISTATE TAX COMMISSION
204 Custer Way
Tumwater, WA 98501
(206) 357-8000
Counsel for Amicus Curiae

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The Multistate Tax Commission hereby requests permission to file the attached *amicus curiae* brief. This brief is filed in support of the Montana Department of Revenue's Petition for a Writ of Certiorari to the Supreme Court of Montana in the captioned matter for the reasons stated therein.

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General Counsel
MULTISTATE TAX COMMISSION
204 Custer Way
Tumwater, WA 98501
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STATEMENT OF INTEREST

The Multistate Tax Commission (hereinafter referred to as the MTC) is the official administrative agency of the Multistate Tax Compact (hereinafter referred to as the Compact) entered into currently by 19 states and the District of Columbia as full members, and by 11 states

as associate members.[1] The purposes of the Compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatability in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicate taxation.[2]

In fulfillment of these objectives, the MTC has sought uniform and rational interpretations of laws which are of general concern to the states.

The MTC is vitally interested that this Court grant the Writ of Certiorari requested by the Petitioner, The Department of Revenue of the State of Montana. In the MTC's judgment, the Montana Supreme Court's decision

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[1]The current regular members are the states of Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington and West Virginia. The associate members are the states of Alabama, Arizona, Georgia, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania and Tennessee.

[2]The constitutionality of the Compact was upheld by the United States Supreme Court in *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U. S. 452 (1978), *aff'g* 417 F. Supp. 795 (S.D.N.Y. 1976). The Court there noted that the Compact "symbolized the recognition that, as applied to multistate businesses, traditional state tax administration was inefficient and costly to both state and taxpayer." *Id.* at 456.

in *First Federal Savings and Loan Association v. Department of Revenue*, — Mont. —, 654 P. 2d 496 (1982) is clearly wrong. The Montana Supreme Court erroneously held that the Montana Corporate License Tax does not constitute a "franchise or other nonproperty tax in lieu thereof imposed on corporations" within the meaning of 31 U.S.C. § 742[3] and comparable statutes. If the tax imposed by Montana Code Annotated (MCA) § 15-31-101 is not such a tax, it is impossible to imagine how any such tax could be described and imposed by any state legislature. The MTC therefore respectfully submits that this Court should grant the Petition for Writ of Certiorari to review the Montana Supreme Court's unprecedented interpretation and application of 31 U.S.C. § 742. Otherwise, 31 U.S.C. § 742 and comparable statutes will be subject to differing interpretations which directly conflict with all the prior decisions of this Court.

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ARGUMENT

The Montana Supreme Court has consistently held that the Corporate License Tax imposed by MCA § 15-31-101 is a franchise tax for the privilege of doing business in Montana in a corporate capacity. *Montana Bank v. Casey*, 135 Mont. 104, 337 P. 2d 935 (1959); *State v. J. C. Maguire Const. Co.*, 113 Mont. 324, 125 P. 2d 433 (1942).

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[3]*As of Sept. 13, 1982, this section has been revised and recodified in 31 U. S. C. Section 3124.*

This Court has traditionally held that interest from exempt federal obligations may be included in the measure of a corporate franchise tax within the limitations of 31 U.S.C. § 742. See *Werner Machine Co. v. Director of Division of Taxation*, 350 U. S. 492 (1956); *Pacific Co. v. Johnson*, 285 U. S. 480 (1932); *Education Films Corporation v. Ward*, 282 U. S. 379 (1931); *Flint v. Stone Tracy Co.*, 220 U. S. 107 (1911); *Cleveland Trust Co. v. Landers*, 184 U. S. 111 (1902); *Home Insurance Company v. New York*, 134 U. S. 594 (1890); *Society for Savings v. Coite*, 73 U. S. (6 Wall.) 594 (1867); *Provident Institution v. Massachusetts*, 73 U. S. (6 Wall.) 611 (1867); *Hamilton Co. v. Massachusetts*, 73 U. S. (6 Wall.) 632 (1867).

Nevertheless, the Montana Supreme Court held that 31 U.S.C. § 742 and comparable statutes prevented Montana from including interest income which the respondents (federal savings and loan associations) received from tax exempt federal obligations in the measure of the Montana Corporate Franchise Tax. This interpretation of either MCA § 15-31-101 or 31 U. S. C. § 742 conflicts with a long line of decisions of this Court, as cited in the preceding paragraph.

This interpretation also conflicts with the basic assumption concerning the scope of 31 U. S. C. § 742 and comparable statutes on which this Court predicated its January 24, 1983 decision in *Memphis Bank & Trust Co. v. Riley C. Garner*, — U. S. —, 51 U.S.L.W. 4104; namely, that interest income from exempt federal obligations may be included in the measure of a nondiscriminatory franchise tax.

CONCLUSION

For the above reasons, and as more fully set forth in the Writ of Certiorari filed by the Department of Revenue for the State of Montana, this Court should grant a Writ of Certiorari in this cause to review the judgment of the Montana Supreme Court.

Respectfully submitted,

WILLIAM D. DEXTER
General Counsel
MULTISTATE TAX COMMISSION

204 Custer Way
Tumwater, WA 98501
(206) 357-8000

Counsel for Amicus Curiae